

**REMARKS**

Claims 1-8 and 10-22 are pending in this application. By this Amendment, claims 1, 5 and 8 are amended. No new matter is added. Reconsideration and allowance of this application are respectfully requested.

**EXAMINER'S INTERVIEW**

Applicants appreciate the courtesies extended to Applicants' representative during the April 13, 2006 telephonic interview. During the interview, Applicants' representative discussed the issues relating to the 35 U.S.C. 112, second paragraph and art rejections. Specifically, Applicants' representative asserted that the amendments to claim 5 and 8 were amended to provide consistency to claim 1. The Examiner agreed with the amendments to claims 5 and 8. With regard to claim 1, the Examiner continued to indicate that the term "first metal thickness" is unclear. The Examiner suggested language such as "height" to more positively recite the claimed invention.

With regard to the art rejection, Applicants' representative asserted that the applied references fail to disclose or suggest "the second insulating layer includes a first sub-layer surrounding the first metal wiring and a second sub-layer formed on the capacitor, the first metal wiring and the first sub-layer, the second sub-layer including a lower layer that is formed between the upper electrode and the first metal wiring, and an upper layer that is formed over the upper electrode", as recited in claim 1. Examiner Nadav was somewhat responsive to Applicants' representative assertions, but stated that the current rejection, as broadly interpreted, still reads on the claims. Applicants' representative then suggested further claim amendment to claim 1 to distinguish over the applied references. Examiner Nadav agreed with Applicants' representative suggestion and indicated that the proposed

amendment appears patentable distinct over the applied references<sup>1</sup>. Thus, it is respectfully submitted that the application is now in condition for allowance.

**CLAIM REJECTIONS - 35 U.S.C. § 112**

Claims 1-5 and 5-8 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

In regard to claims 5 and 8, Applicants submit that claims 5 and 8 have been amended to obviate the rejection. Specifically, claims 5 and 8 have been amended to replace “insulating interlayer” to “second insulating layer”, in order to provide consistency with claim 1.

In regard to claim 1, the Examiner asserts that the term “first metal *thickness*” to be unclear. Accordingly, as agreed by the Examiner during the interview, Applicants have amended the term “thickness” with the term “height”.

Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

**CLAIM REJECTIONS - 35 U.S.C. §103**

Claims 1-2 and 5-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Okumura et al. (“Okumura”), U.S. Patent no. 6,163,046 in view of Suwanai et al. (“Suwanai”), U.S. Patent no. 5,389,558. This rejection is respectfully traversed.

As discussed and agreed by the Examiner, Applicants submit that Okumura and Suwanai, individually or in combination, fail to disclose or suggest, *inter alia*, the “second insulating layer includes a first sub-layer surrounding the first metal wiring and a second sub-layer formed on the capacitor, the first metal wiring and the first sub-layer, the second sub-layer including a lower layer that is formed between the upper electrode and the first metal

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<sup>1</sup> See Interview Summary dated April 13, 2006.

wiring, and an upper layer that is formed over the upper electrode, and the first sub-layer is distinct from the second sub-layer", as recited in claim 1.

The Examiner allegedly asserted that Suwanai teaches a second insulating layer 51 having a first sub-layer and a second sub-layer. However, it is submitted that the first sub-layer and second sub-layer of Suwanai are not distinct layers.

Accordingly, for at least these reasons, claim 1 and those claims dependent thereon are allowable over the applied art. Withdrawal of the rejection is respectfully requested.

#### **RESPONSE TO ARGUMENTS**

The Examiner asserted in the "Response to Arguments" that:

in claim 1, Applicant arbitrarily categorizes layers 120, 1204a and 124b as one layer (second insulated layer), which can be divided into three separate sections (layers). Applying the same analogy to prior art, Okumura et al. teaches one layer (second insulating layer 20) which can be arbitrarily be divided into three sections (layers) (*emphasis added*).

However, it is submitted that the second insulating layer 120 and 124 are not arbitrarily formed, as suggested by the Examiner. The second insulating layer 120 and 124 are three distinct identifying structures formed by different decomposition processes to reflect the construction of the semiconductor device (see Figs. 3B - 3E and paragraphs [0041] - [0046] in the instant disclosure for support). Thus, it is submitted that Applicants are not arbitrarily categorizing layers 120, 124a and 124b as one layer which can be divided into three separate sections, as asserted by the Examiner.

#### **CONCLUSION**

Accordingly, in view of the above amendments and remarks, reconsideration of the rejections and allowance of each of the claims in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By

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